

# **A Justification of Whistleblowing**

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### **1. Introduction**

Whistleblowing is the act of disclosing information from a public or private organization with the purpose of revealing cases of professional misconduct, or the violation of democratic procedures that are of immediate or even potential danger to the public interest.<sup>1</sup> The principle of whistleblowing is recognized by many governments, where the institution of independent agencies provide a channel through which employees can make confidential disclosures. Whistleblowing disclosures protected under the law usually include “a violation of any law, rule, or regulation; or ... gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety”<sup>2</sup>

Cases of whistleblowing usually emerge within two fields: in cases of professional misconduct, chiefly corruption -- either in the public administration or in private corporations; and when serious violations of citizens’ rights to privacy and information are perpetrated by governments, often under a veil of secrecy. As for the first, whistleblowing plays an important role in preventing corruption due to important disclosures unavailable to either the public or concerned authorities. When public officials make use of public resources to serve their own private interests, often in the assurance that their activities will remain unpunished, whistleblowers who reveal cases of corruption contribute to denounce this crime of abuse and re-establish, if at all, confidence in the proper function of public institutions and private firms.

The second form of whistleblowing concerns a related, and yet distinct case of abuse that affects the rights of citizens. Government abuse does not necessarily involve the breach of law, but the uncontrolled power executive agencies —be it, governments themselves, or institutions under their control— exercise beyond their constitutional mandate. In this paper, we will focus on this second form of whistleblowing —call it political whistleblowing<sup>3</sup>— which poses distinctive problems for democracy. We refer to political whistleblowing as those acts of disclosure of information classified under executive privilege, and carried out in violation of non-disclosure clauses. Political whistleblowing encompasses disclosures made by either a personnel of a government agency, or by third parties acting in the name of public interest. For instance, the revelations by Edward Snowden on the surveillance programs run by the NSA is a paramount example of the first kind of act, while Wikileaks's recent publication of CIA material arguably belongs to the second kind. In either case, the whistleblower often violates the law, but fulfills —at least in their perspective— the duty of upholding just institutions. What is most important about political whistleblowing is that it stands testimony to the fact that often institutional and constitutional checks might not be sufficient to control excesses that result from secrecy.

Political whistleblowing is a controversial issue, and often polarizes opinions. While civil liberty groups defend whistleblowing for imposing standards of public accountability on the government, opposers have urged that these revelations should be rather treated as plain acts of terrorism against national security. Threats of this sort appear worrisome, as they levy additional burdens on whistleblowers, who already carry high personal risk in their activities, and are often exposed to legal prosecution under treason laws, as in the recent cases of Chelsea Manning and Edward Snowden. For instance, in the aftermath of Snowden's early revelations, James Clapper —the former Director of US National Intelligence— declared before the US Senate Intelligence Committee that the leaks represented the "most damaging theft of intelligence information in our history", adding that "ter-

rorists and other adversaries of this country are going to school on U.S. intelligence sources, methods and tradecraft, and the insights that they are gaining are making our job much, much harder.”<sup>4</sup>

Here we defend the argument that whistleblowing is a permissible act when it exhibits the right kind of intent and fulfills specific communicative constraints in addressing issues of public interest. The paper is divided into three parts. In the next section we will review some arguments against whistleblowing. In section three we discuss the communicative aspect and the intent requirement for legitimate whistleblowing. In section four we argue that a full justification of whistleblowing disclosures should be based on public interest.

## **2. The threat from leaking**

The need for a justification of whistleblowing arises particularly when the employee is part of an organization. It is generally argued that, by agreeing to work in an organization, the employee is obliged to adhere to the rules governing it. However, employees are not only bound by a contract, but also by a duty of loyalty towards the organization and their fellow colleagues.<sup>5</sup> Thus, disclosing information not only conflicts with such a duty but also breaks the bounds of mutual accountability towards fellow colleagues who might not approve of such behavior. It breaks a legal and a moral code of conduct. We agree that, when democratic institutions or public organizations have an established internal procedure to address concerns of employees, disclosures are unjustified. However, it is unclear whether disclosure would be justified in the opposite case, that is when procedures are absent, limited, or inhibit the very process of redress. The question is then whether whistleblowing can be a legitimate instrument for correcting wrongs in circumstances where no other internal channel is available. In virtue of this feature, some accounts classify whistleblowing as an act of last resort, which cannot be treated as a conventional institutional procedure.<sup>6</sup> Thus, acts of whistleblowing can be acceptable only when they concur to reinforce the existing structures of democratic self-

correction, but not to replace or subvert them altogether. When sufficient evidence points to the complicity of top officials or limitation of the procedures to address wrongs, whistleblowing can be used to redress such limitations in order to uphold public interest and accountability.<sup>7</sup> Thus, any subversion of the procedures demands justification of why it was required and why alternative mechanisms were unable to fulfill the same role.

In the context of political whistleblowing, additional justifications are in order when the information is classified for reasons of national security. In such cases, the employee entrusted with security clearance is in possession of information whose disclosure may have potential disruptive consequences for a country as a whole, and thus weightier and more demanding constraints apply. This point requires further clarification in the light of the fierce criticism that political whistleblowing has invited after the NSA disclosures. The affair has led political commentators and scholars to argue that such disclosures can never be justified<sup>8</sup> as they represent malicious actions intended to aid the enemy<sup>9</sup>, inviting even reference to espionage.

In a series of works, Rahul Sagar raises a few troubling questions regarding what he calls unrestrained practices of whistleblowing and anonymous acts of leaking. In the same vein he argues that leaking, though inevitable, can be done with a malicious intent. He presents three strands of criticism<sup>10</sup>. First is the public accountability argument: those leaking the information do not have the consent of the citizens, they have not been designated, neither elected for this purpose, nor been appointed by their representatives;<sup>11</sup> and they cannot take decisions based on private judgements,<sup>12</sup> which might be guided by malicious concerns. These motives are often not available for public scrutiny,<sup>13</sup> and revelations can often be used to manipulate public opinion. Moreover, “by subverting the decisions of the president, Congress, and the courts, the employee has undermined the authority that the people have vested in these representative institutions.”<sup>14</sup> In sum, the argument chal-

lenges the legitimacy of such disclosures whereby neither accountability is ensured nor guaranteed: “...the pervasiveness of disagreement over the rightful bonds of public authority imposes an obligation on the official as to how she ought to proceed when making an unauthorized disclosure — namely, she ought to identify herself so that the public (and potentially, jurors) can examine her motives.”<sup>15</sup> The argument from public accountability rests on the premise of the legitimacy of political authority and the publicity of motivations for disclosure. However, while it is true that leakers do not have legal authority to disseminate information, it does not follow that they cannot do so when they possess information regarding a concern of public interest. Such an act, while it subverts established democratic procedures, it does not necessarily undermine democratic authority, for it appeals to the judgement of the citizens, by providing evidence of wrongdoings with the purpose of correcting those democratic deficits that go unchecked through procedural mechanisms. It is rather an act of democratic dissent, employed often as a last resort, through an appeal to citizens in whom the democratic authority is ultimately based. Thus, the criticism of subversion by Sagar is a narrow understanding of representative institutions, especially when such institutions work contrary to the constitutional mechanisms and all correlative controls over power are absent. Moreover, the argument from public accountability, although it points to understandable concerns about vested interests of the leakers, it does not account for the constraints they face. If the choice is between not leaking (due to concerns for personal or occupational safety), and anonymous disclosures, the latter is justified over silence when it is in the public interest and backed by proper evidence.<sup>16</sup> Thus, there is room for a justification of anonymous disclosures when the absence of constitutional safeguards for whistleblower protection puts an unfair burden on dissenting actions.<sup>17</sup>

The second argument concerns efficiency and trust: unauthorized disclosures —Sagar argues— undermines the “efficient functioning of the government, which, like any other collective enterprise, cannot achieve its aims in the absence of loyalty and faithfulness on the part of its members.”<sup>18</sup> It

violates the “trust that they have asked to be placed in themselves”,<sup>19</sup> and thwarts the possibility of security agencies to recruit informers; moreover, it could even put at risk the lives of some people. Leaks can undermine security, “reveal sources and methods used to obtain secret intelligence”, and the ability to undertake activities that are “morally troubling or politically embarrassing [but] nevertheless vital for national security.”<sup>20</sup> In response to this charge, we should notice that the fact that some leaks can be motivated by malicious intents<sup>21</sup> is not sufficient to conclude that every leak is unjustified. National security justification is not absolute in character, but should rather follow procedures of proper assessment through congressional committees or request of disclosure by concerned citizens.<sup>22</sup>

The third, and perhaps most important argument raised by Sagar concerns information. He argues that information regarding the context of the disclosure and its effects is always imperfect. Since a piece of hidden information might have innumerable consequences, many of which are unknown to the leaker, unintended consequences may follow, ending up being harmful to national security; thus any national security leak should *ex-ante* account for all unintended consequences before embarking on disclosures. If this is not possible because the leaker has insufficient information, then leaks are not justified, and in such circumstances the discretion of the executive to maintain secrecy privilege over a certain information should be respected. Contextual limits refer to the fact that a potential whistleblower is not always in the position to account for the constraints decision makers had to face, and which may have justified the exercise of secrecy privilege.<sup>23</sup> When sufficient knowledge lacks around the context of decision making, a justification of any act of disclosure is harder to find.

We agree with Sagar that partial information affects the situation of choice; however this is true of every choice made in condition of uncertainty. If he were right, then a potential whistleblower

would never be in the position to judge the appropriateness of a disclosure. The argument is simply too demanding. We should instead assume that the choice happens in conditions of imperfect information, and rather ask ourselves whether the whistleblowers may have *prima facie* or ultimate reasons to disclose that override the informational limits, such as when they are in possession of evidence of a crime or a gross violation of a right. The informational requirement should then be relaxed in order to include truthfulness criteria of the evidence at hand. In the next section we spell out some of these criteria.

### **3. Permissibility conditions for whistleblowing**

Thus far we have presented some arguments against the legitimacy of whistleblowing. The problem arises from the bundle of issues raised by the contractual obligations of the employee, trust and loyalty in the organization and to fellow colleagues, partial information, the authority to disclose, risk to the organization or the public at large, and finally from the lack of authority to disclose classified information.<sup>24</sup> Conditions for its justification have drawn widespread disagreements among scholars, particularly regarding the purpose of disclosures, the disclosure recipient, and the identity/anonymity of the whistleblower. For some, whistleblowing is justified “to prevent serious harm to others if they can do so with little cost to themselves”,<sup>25</sup> to prevent complicity in wrongdoing,<sup>26</sup> a civic and moral duty to promote the common good when the “state does not constitute a dependable disclosure recipient,”<sup>27</sup> as ‘political vigilantism’ that determines proper scope of secrecy and challenges allocation of power,<sup>28</sup> but also when it reveals violation of ‘shared interests’ by the executive.<sup>29</sup> Post the NSA revelations by Snowden, his act has been justified as an act of conscience,<sup>30</sup> as conscientious objection,<sup>31</sup> and as an act of civil disobedience.<sup>32</sup> Whistleblowing is also considered by some as an act of dissent,<sup>33</sup> in particular as a “new form of worker resistance.”<sup>34</sup> While Richard De George, Terrance McConnell, and Sagar argue that only public disclosures — preceded by attempts at internal disclosures backed by evidence, and done with the right intent—

would count as legitimate,<sup>35</sup> others like Elliston<sup>36</sup> have insisted on the right to anonymity, while Peter Jubb<sup>37</sup> allows even for whistleblowing by individuals not belonging to the organization.

Any account of whistleblowing should accommodate the variety of unauthorized disclosures and assess them within the circumstances in which the agent operates. These varieties include public revelations, anonymous leaking, and third party disclosures. Of course not all forms of leaking or unauthorized disclosures count as instances of whistleblowing. Leaking a secret information may in fact serve several purposes, some of which are morally impermissible. It may work for the benefit of outside agents or contrary to the interests of the polity. But in order to assess the limits of legitimate disclosures, we need in the first place a justification of the morality of whistleblowing. The current debate on whistleblowing has so far focused on statutory limits, paying little or no attention to the fact that whistleblowers take important, if not sometimes tragic, moral stances in circumstances of choice where everything seems to run against them. In what follows, we offer an analytical understanding of the conditions under which an act of whistleblowing is morally justifiable. By an act being morally justifiable we intend to stress two aspects: first, that disclosures falling within the category of whistleblowing are communicative acts, that is words or messages intended to convey information. Second, such an act stands for moral scrutiny over and beyond the statutory or political consequences bearing on it. We do not say that acts of whistleblowing have no political or public significance, but rather that their political or public significance should be also assessed against the moral stance that motivates the act. A malicious leak of valuable material of public importance shall be treated differently—in the public opinion and in front of a court—from disclosures based on reasons of public interest, or genuine concerns for democratic values.

Now, for an act of whistleblowing to be morally justified, it needs to fulfill three conditions:

- (a) Disclosures should meet certain communicative constraints;



- (b) It must be done with the right kind of intent;
- (c) It addresses issues of public interest.<sup>38</sup>

Let's analyze them. By communicative constraints, we refer to those that operate on the communicative aspects of the disclosure.<sup>39</sup> They are essentially three.

#### *Communicative constraints*

- (i) The act shall be as informative as possible for a given audience;
- (ii) No information known to be false shall be disclosed;
- (iii) No information shall be disclosed for which adequate evidence is lacking.

The first communicative condition simply states that the information being disclosed should be relevant to a given audience, which may consist in the public opinion—including the press—in a general constituency of citizens, or in a specific group thereof. The second condition states that the whistleblower should believe in the truthfulness of the information they intend to disclose at the time of disclosure, and—third—back it by documents or any evidence that can pass a fact-checking test. These constraints are meant to exclude possible strategic or manipulative usage of disclosures known to be misleading or plainly false.

#### *Intent*

Let's now move to the intent condition. Assessing the intent of an act of whistleblowing may be complicated. For one thing, when the intent is interpreted as a psychological motive, it may be hard to identify. For another, the motive itself may be legally irrelevant *vis-à-vis* the political or legal value of the potential wrong being revealed.

However, since acts of whistleblowing are often on the edge of the law, they call into question a moral and not only a strict legal or political dimension. A theory of whistleblowing should therefore identify which subjective circumstances justify the moral standpoint of the potential whistleblower, who may often face a personal struggle in making up her mind. A breach of oath may involve sentiments of guilt and treason, and have dire long-term consequences for the life of the discloser. Sometimes, they can involve genuine moral dilemmas. Likewise, sentiments of revenge or resentment against one's superior may be among the motives that trigger the disclosures. In such circumstances, one may say that only pure motives required by a Kantian view would justify whistleblowing. Yet, this does not seem to be a reasonable criterion of the intent, for it would be too strict.<sup>40</sup> We need a more comprehensive understanding. Our proposal is to suggest a tentative test for the intent in disclosures. Call it the harm test:

The harm test: blowing the whistle is *prima facie* justified on the balance of reasons when the expected risk the whistleblower estimates about the potential harm she may suffer from disclosing the information is higher than the estimated probability of the expected advantage she may enjoy from the disclosure.

The test is meant to provide a criterion of assessment about the risk the whistleblower is ready to take in disclosing information, but does not exclude that a personal interest may concur in the disclosure. It only states that, on the balance of reasons (pros and cons for the disclosure), an act of whistleblowing may also be prompted by blameworthy motives, insofar as the expected risk of harmful consequences following the disclosure is higher than the expected advantage the whistleblower may receive. It would then be sufficient for an agent to accept the risk of a negative net sum of personal harm over advantage to conclude for its permissibility.

Is the harm test sufficient to justify an act of whistleblowing? No. At least two difficulties arise here.

First, the whistleblower may satisfy the harm test, and yet fail to act successfully. For instance, consider acts, which we assume to exhibit the right kind of intent but have negative or null consequences for a targeted audience. We can imagine two scenarios here: one in which the whistleblower takes a risk without being able to reach its audience. This is the case, for instance, of the disclosure of a corruption ring within an organization, through internal channels, that reveals to be ineffective due to the lack of an independent authority of the overseeing committee, or even for the authorities' complicity in the corruptive practice. Provided with sufficient knowledge of the odds that the leaks will be duly addressed, the whistleblowers who decide to pursue this channel would expose themselves to an unreasonable risk of retaliation. They would certainly act out of a noble motive, but of mere testimony. The other scenario is one in which the whistleblower acts instrumentally in the exclusive pursuit of a personal interest, and in doing so she fails to contribute to a concurring interest for the target audience. This is the case, for instance, of the whistleblower whose goal is to cash a premium for exposing a corruption ring, without proper consideration of odds in their favor.<sup>41</sup>

The second difficulty is when the intent is bad on the balance of reasons, but the consequences are beneficial to the interests of a certain group, as in the case of the whistleblower who acts exclusively for personal interests, but whose revelations contribute to bring criminals to justice. Cases of this sort may include anonymous disclosures with the purpose of revenge, or even tit-for-tat agreements with the authorities in exchange for preferential treatment in court. Here the harm test seems to be *redundant*. Even worse, arguments of this sort are exactly those that prompt accusations of espionage against government whistleblowers, for —as the propaganda goes— whistleblowers are aware of the damage to national security and of the possible use of leaked information to potential

enemies. An act of espionage is in fact successful when it conveys a secret information that is relevant to the receiver, and which the receiver could not otherwise obtain; it is informative, and it must be truthful to further the interest of the receiver (otherwise it would be manipulative); finally, it is usually accompanied by evidence. The argument is instrumental in our opinion, for in the case of espionage the act is performed with the knowing intention of passing information to an enemy. Yet, in order to spell out the difference between whistleblowers in good faith and leakers of other guise, more analysis is required. Although the harm test contributes to rule out cases of straightforward malice, it cannot alone provide an independent criterion for the justification of whistleblowing. We need to strengthen the conditions required for justified whistleblowing.

#### **4. Public interest**

Along with the right kind of intent, a successful act of whistleblowing should provide information that serves the public interest. But, what exactly is ‘public interest’?

Reference to the public interest is ubiquitous in political life and in the legal terminology, such as the UK Public Interest Disclosure Act (1998), whose preamble declares to protect individuals who make disclosures of information in the public interest and to allow such individuals to bring action in respect of victimization. Despite the common usage, there is yet no univocal definition of public interest, and political philosophers have been scarcely interested in defining the concept or distinguish it from other cognate notions. Rawls himself, in addressing this issue, refers to principle of the common interest.<sup>42</sup> Brian Barry argues that public interest is an interest in which everyone in society shares in his or her capacity *qua* a member of the public.<sup>43</sup> Perhaps a characterization more amenable to the egalitarian ethos is to identify the public interest with the results of a democratic deliberation.<sup>44</sup> On a different front, Richard Flathman<sup>45</sup> argues that public interest is a constraint on policy, requiring public officials and administrators to take into account the effects of a decision on all affected persons (and not just specific groups).<sup>46</sup> What all these notions of public interest seem to

have in common is the idea that public interest consists of a set of non-competing interests of the members of a polity. Public order and personal safety, public health, national security and defense are all examples of goods that figure in the public interest of a society. These are all examples of public goods, that is neither excludable nor rivalrous, goods everybody has an equal interest in.

Following Virginia Held, we can say that something is in the public interest when it is part of a set of individual interests that are consistent across a social set.<sup>47</sup> Such set can be a community or society at large whose criteria of membership may be informal and self-ascriptive. It can otherwise be a political constituency, whose belonging is not self-ascriptive, but rather given by other features, such as citizenship, nationality, or other legal or political entitlements. The interesting aspect of the consistency requirement expressed by this view is that public interest is, after all, a form of group interest. Group interests are given convergent preferences and coordinated activities structured by joint commitments. Yet, this is unsatisfying in many ways, for what distinguishes a group interest from the public interest seems exactly the opposite, i.e. public interest may be not in the interest of every member of a given social set. Something in the public interest can certainly be a group interest, but not necessarily so. But, how can something in the public interest cannot be an interest of every member of the public? One answer is that the collective nature of public interest cannot be reduced to the sum of individual interests, that is the public interest is not an aggregate of individual interests. We will not pursue this argument here, but rather point out that important cases of public interest do not count as public goods. Among them are of course common goods which are non-excludable but yet rivalrous. Often, the case in point concerns the provision of natural resources whose pool is depleted through long-term exploitation, but also of those social services, including schools, health, and public safety, when financial resources are limited. In all these cases, public interest does not consist in securing non-competitive interests, for the legitimate interests of the members of a polity come into conflict over time as the resources decrease. This is also the case of

those fundamental interests constitutionally entrenched, which do not usually allow for trade-offs. Freedoms of speech and movement are a case in point. A growing trend in the post 9/11 scenario calls for a balance between such liberties and national security, often invoking public interest arguments. Whether a balance should be struck or not we will not discuss it here, but the very nature of the contention provides evidence of a sensible use of public interest in cases of competing interests. If we admit that issues of public interest may not be the result of an agreement, can we make sense of a notion of public interest at all? Otherwise said, can we make sense of a notion of public interest that does not appeal to the interests everybody has an equal share in? Although we do not offer a general definition of public interest, two aspects of the notion, at least in its common usage, contribute to a justification of whistleblowing.

First, we should notice that when we say that something is in the public interest, we mean *inter alia* that there is a presumptive interest for the public at large that everybody being part of that public may have an interest to be informed as it may concern them. Notice, that this is only a presumptive interest; the public may after all dismiss the information as irrelevant, or simply be unconcerned with it. Still, the presumption holds that the information may be potentially valuable.

The second aspect concerns the content of public interest. Along with the distribution of social benefits, public interest does also include the enjoyment of those fundamental civil and political rights that are all-purposive for the attainment of these social benefits. Thus, public interest in this second sense does not consist in any specific distribution of social benefits, but in the set of rights that supervise the arrangement of those benefits and the enjoyment of more substantive rights.

Now, public interest is crucial for a justification of whistleblowing not only because it is often invoked as a reason for disclosures,<sup>48</sup> but also because such disclosures protect the interests of all

those in whose name the disclosure is made. We can then say that an act of whistleblowing is justified *inter alia* when the information it conveys is of a presumptive interest for a public insofar as it reveals an instance of injustice or violation of a civil or political right done against and unbeknown to some members of that polity.

## Conclusion

In this paper we defend the idea that whistleblowing is morally justified when it satisfies certain normative conditions of communication, intent, and public interest. We spell out the three conditions in detail and in doing so we rebut the existent criticism against unauthorized disclosures and whistleblowing. We also insist on the role of public interest against many of these critiques. In particular, we reject the common charge against whistleblowing as a form of camouflaged espionage, for espionage is performed with the knowing intention that the act can potentially harm the public interest.

Two important consequences follow from our account. First, that acts of whistleblowing are not only morally permissible, but also *demand*ed, when nobody else other than the potential whistleblower possesses the information of a public interest.<sup>49</sup> Second, that an application of the above criteria justifies also anonymous disclosures. We believe that absent protective mechanisms, any public whistleblowing is fraught with dangers for the personal and professional life of the whistleblower. Given the circumstances, expecting whistleblowers to disclose information in the public is putting an unfair burden on individuals who seek to uphold public interest and ensure accountability of democratic institutions in absence of correlative measures of control. This is especially true in recent times, when whistleblowers have faced unfair retaliation on an unprecedented scale. However, we do not argue further on these points in this paper.

Whistleblowing is a new emerging form of dissent that deserves engagement because of its value in upholding public interest and ensuring democratic accountability. The globalized war on terror has ensured new technologies of surveillance and governance with increasing scope for secrecy of executive operations. Under such circumstances, the increased power of the governments also creates the possibility of an enhanced threat to the rights of the citizens by the very same authority accountable to protect them. Thus, newer techniques of governance demand newer forms of engagement, and evolving conceptions and actions of dissent in order to expose and mitigate those threats. In this regard, whistleblowing plays a corrective role and ensures that citizens are informed about what governments do in their name. Despite the important role that whistleblowers play in ensuring accountability, whistleblowing has not received its due attention in debates in political philosophy, barring a few exceptions in the literature on civil disobedience. Given the importance of unauthorized disclosures to democratic accountability, these emerging forms of dissent not only need to be studied for their impact on democracy, but can only be ignored at the peril of theory itself.

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## NOTES

<sup>1</sup> There is no standard accepted definition of whistleblowing so far in the political theory literature. We provided one along these lines in a previous work on the subject, the report *Blowing the Whistle on Corruption* (2014).

<sup>2</sup> This is, for instance, the function of the US Office of Special Counsel. See US Code § 1213 “Provisions relating to disclosures of violations of law, gross mismanagement, and certain other matters.”

<sup>3</sup> Some authors term these forms of disclosures ‘government whistleblowing’, insisting on the legal prerogative that allows governments to invade their citizens’ rights. See Delmas (2014), De George (2014). However, such terminology seems to be unduly restrictive, for many investigative bodies are not under the direct control of governments, and even when they are, they can still retain some form of independence from the executive. This is the case, for instance, of the FBI in the United States, or the Intelligence and Security Parliament Committees of many European countries. We term this form of whistleblowing ‘political’ to encompass all those cases of disclosures that address a specific kind of violation, namely the political rights of citizens within a constitutional state.

<sup>4</sup> See: “Report puts Snowden-like leaks as the No. 2 threat to U.S. security”, by Ken Dilanian, *Los Angeles Times*, January 29, 2014.

<sup>5</sup> De George (2014:326) argues that, under appropriate circumstances, obedience is the expected norm and that whistleblowing requires justification. Bowie (1982: 140-43) claims that the employee has a *prima facie* duty of loyalty to the organization, so while it can be overridden in certain circumstances, this still represents disloyalty. For Duska (2007), there is no obligation of loyalty to the company, while for Corvino (2002) the duty of loyalty does not conflict with the duty to blow the whistle. Larmer (1992) also agrees that whistleblowing is compatible with a duty of loyalty, while for Vandekerckhove and Commers (2004) whistleblowing is compatible with loyalty to the stated vision and objectives of the company. We leave aside this aspect of the discussion from the current paper.

<sup>6</sup> See De George (2014). For Sissela Bok whistleblowing “has to remain a last alternative because of its destructive side effects: it must be chosen only when other alternatives have been considered and rejected. They may be rejected if they simply do not apply to the problem at hand, or when there is not time to go through routine channels, or when the institution is so corrupt or coercive that steps will be taken to silence the whistleblower should he try the regular channels first.” (1980: 286). Adam Moore (2011) sees Wikileaks kind of disclosures as a way of ensuring accountability in absence of procedural safeguards.

<sup>7</sup> See Bok (1980:286).

<sup>8</sup> In a recent paper, Rahul Sagar argues that Snowden and Glenn Greenwald’s actions cannot be justified because they treat privacy and transparency as trumps. See Sagar (2015).

<sup>9</sup> See: “Our enemies are stronger because of Edward Snowden’s treacherous betrayal”, by Con Coughlin, *The Telegraph*, May 14, 2014.

<sup>10</sup> Sagar’s argument has been categorized for the sake of analytical clarity and does not represent the original classification in the book.

<sup>11</sup> Sagar (2013a: 113-14).

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.



<sup>14</sup> Sagar (2013b)

<sup>15</sup> Sagar (2013a:130). This is indeed a version of the argument that rejects whistleblowing for undermining loyalty to the organization and fellow workers. For more discussion on this point see *supra* note 6.

<sup>16</sup> Fredrick Elliston argues that the charge of susceptibility of evidence for anonymous disclosures does not stand since, despite the lack of knowledge about the identity of the whistleblower, evidence can be verified using the same sources used by the whistleblower (Elliston 1982: 173). For him the truth of the accusation does not depend on the motivation, but it can rather be ascertained independently of it (1982: 174).

<sup>17</sup> On the same point, Elliston argues that prohibition on anonymous disclosures becomes less stringent when the probability of unfair retaliation is high (1982: 172).

<sup>18</sup> Sagar (2013a: 110).

<sup>19</sup> Sagar (2013b) This is indeed a version of the argument that rejects whistleblowing for undermining loyalty to the organization and fellow workers.

<sup>20</sup> Sagar (2013a: 108).

<sup>21</sup> As some have speculated in the Democratic National Committee email database leaks published by Wikileaks starting last July 2016. The case involved the presidential candidate Hillary Clinton, and led to the resignation of DNC chairperson Debbie Wasserman Schultz. The database is available at: <https://wikileaks.org/dnc-emails/>.

<sup>22</sup> Citizens have constitutionally protected rights to information and declassification of executive decisions under proper circumstances. We elaborate on this right in another joint paper, “Liberty, Secrecy, and the Right of Assessment” (unpublished).

<sup>23</sup> Sagar (2013a: 112, 130).

<sup>24</sup> Lack of authority to disclose has led some authors to equate whistleblowing with vigilantism. See Delmas (2015).

<sup>25</sup> De George (2014:321). Serious harms are also required for the act of whistleblowing to be justified. See Velasquez (2006).

<sup>26</sup> Davis (1996).

<sup>27</sup> Delmas (2014).

<sup>28</sup> Delmas (2014: 94).

<sup>29</sup> See Sagar (2013a: 127-129) for some skepticism about the authority of the whistleblower to interpret which interests are shared.

<sup>30</sup> See for instance "The Conscience of Edward Snowden" by Roger Berkowitz, 21 June 2014, *The Hannah Arendt Center for Politics and Humanities* <http://hac.bard.edu/news/?url=the-conscience-of-edward-snowden/>

<sup>31</sup> See for instance: "Edward Snowden: more conscientious objector than common thief", Editorial, June 10, 2013, *The Guardian*.

<sup>32</sup> See Brownlee (2016), Scheuerman (2014; 2016), Celikates (2016a; 2016b).

<sup>33</sup> Jubb (1999), Bok (1983).

<sup>34</sup> Rothschild and Miethe (1999: 124).

<sup>35</sup> See De George (2014); McConnell (2003), Sagar (2013a).

<sup>36</sup> See Elliston (1982).

<sup>37</sup> Jubb (1999: 86).

<sup>38</sup> These three criteria should be able to respond to the commonly held objections against acts of whistleblowing, as well as to do justice to different cases of whistleblowing not covered in the existing theories mentioned above.

<sup>39</sup> These conditions are partly inspired by the Gricean idea of conversational maxims (see Grice 1975). However, while for Grice the conversational maxims have a linguistic significance, here the conditions have a normative function.

<sup>40</sup> For a philosophical debate on the relevance of intent for moral permissibility, especially with regard to the doctrine of double effect, see Judith J. Thomson (1991), Thomas Scanlon (2009), Frances Kamm (2008). They all deny, under certain conditions, the relevance of the intent condition for permissibility. For an opposite view, see McMahan (2009). Given the scope of this paper, we do not enter into this debate here.

<sup>41</sup> For a real case scenario, consider the United States, where the anti-corruption legislation provides incentives for potential whistleblowers, such that the amount retrieved by blowing the whistle can be traced back to the premiums paid to whistleblowers (the so-called “Qui Tam” rule).

<sup>42</sup> Rawls writes: “According to this principle institutions are ranked by how effectively they guarantee the conditions necessary for all equally to further their aims, or by how efficiently they advance shared ends that will similarly benefit everyone. Thus reasonable regulations to maintain public order and security, or efficient measures for public health and safety, promote the common interest in this sense. So do collective efforts for national defense in a just war”. (Rawls 1999: 83).

<sup>43</sup> See Barry (1964: 190).

<sup>44</sup> See O’Flynn (2014).

<sup>45</sup> See Flathman (1966). See also Held (1970: 2-3, 10).

<sup>46</sup> There is a vast literature on public interest among scholars of public administration. For some, public interest reflects the fiduciary role of public administration in preserving common goods (see King et al, 2010), while for others public interest has a regulative function, serving as a barometer for citizens to judge public decisions (Downs 1962).

<sup>47</sup> Held (1970: chapter 2).

<sup>48</sup> In his book on the Snowden affair, Glenn Greenwald writes: “Snowden left it up to Laura [Poitras] and me to decide which stories should be reported.... Snowden... stressed how urgent it was that we vet all the material carefully. “I selected these documents based on what’s in the public interest,” he told us, “but I’m relying on you to use your journalistic judgment to only publish those documents that the public should see and that can be revealed without harm to any innocent people.”(Greenwald 2014: 34)

<sup>49</sup> This is also Bok’s position: “Certain outrages are so blatant, and certain dangers so great, that all who are in a position to warn of them have a *prima facie* obligation to do so”. (Bok, 1983: 219)